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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,636	11/20/2001	Michael J. Fell	MMD-PT004.1	1159

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EXAMINER

WUJCIAK, ALFRED J

ART UNIT PAPER NUMBER

3632

DATE MAILED: 05/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/989,636

Applicant(s)

FELL, MICHAEL J.

Examiner

Alfred J Wujciak III

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/24/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This is the second Office Action for the serial number 09/989,636, Method and Device for Merchandising a Product, filed on 11/20/01.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 16-30 and 32-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16, line 4, "disposed on the base" is indefinite because the drawings show the shelves are disposed above and not on the base, it should be changed to ---disposed above the base---; claim 26, "element disposed on the base" should be ---element disposed above the base---; claim 32, line 2, "the display shelf" should be changed to ---the base ---; claim 33, line 1, "display shelf" should be ---display element--- for clarification.

Claims 17-25 are rejected as depending on rejected claim 16.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-18, 20, 24,26-32,34-35,37 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent # 3,640,389 to Snyder.

Snyder teaches an apparatus (figure 1) comprising a base (44) having a top portion and a lateral side (32). The base comprises a first merchandising element (31) detachably engaged with the lateral side. The base comprises a shelving element (70) disposed above the top of base. The base further comprises a second merchandising element (21) detachably engaged with one of the base and the shelving element. The second merchandising element has a shape (figure 1). The shelving element includes shelves (70), which extend in at least two directions. The second merchandising elements comprise at least a portion (49) extending beyond the shelving element (figure 1). The second merchandising element comprises an illuminated sign (51). The base comprises a product supporting element (41) having a peg board (45) and a slat wall (figure 3). In regards to claim 31, Snyder teaches a product merchandising apparatus comprising a base (44) having spaced apart opposed face portions (32) define a receiving slot (38) between them. The apparatus includes signage retentions means (39) on at least one of the face portions for releasably retention of signage associate with the product. The apparatus comprises a vertical support (21) that is received within the slot. The apparatus includes at least one product display means (70) and a display element (51) that corresponds to a displayed product. In regards to claim 32, the display element is supported by the vertical support in a position above the display element. In regards to claim 34, the signage retention means extends laterally across the at least one opposed face portion. The display means is a shelf that is retained by the vertical support in

a generally horizontal plane above the base. In regard to claims 37 and 39, the display element has the same general shape as the display product (rectangular shape).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of US Patent # 4,611,717 to Huston.

Snyder teaches the shelving element but fails to teach the at least one product is located on the shelving element. Furthermore, Snyder teaches the second merchandising element is a sign (51) but fails to teach the sign is related to a shoe. Huston teaches at least one product (Ss) and shoe (Sh) are located on the shelving element (S). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the product and shoe to Snyder's shelving element and sign as taught by Huston to provide a display on the shelving element.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of US Patent # 4,403,554 to Valentine et al.

Snyder teaches the first merchandising element but fails to teach the first merchandising element comprises a mirror. Valentine et al. teaches a mirror (abstract, lines 2-3). It would have

been obvious for one of ordinary skill in the art at the time the invention was made to have added mirror to Snyder's first merchandising element as taught by Valentine et al. to provide an ornament appearance.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of Valentine and in further view of Huston.

Snyder teaches the shelving element but fails to teach the at least one product is located on the shelving element. Furthermore, Snyder teaches the second merchandising element is a sign (51) but fails to teach the sign is related to a shoe. Huston teaches at least one product (Ss) and shoe (Sh) are located on the shelving element (S). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the product and shoe to Snyder's shelving element and sign as taught by Huston to provide a display on the shelving element.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of US Patent # Re. 36,676 to Sourlis.

Snyder teaches the base but fails to teach the base has an appearance of a masonry element. Sourlis teaches the appearance of the masonry element (10). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the masonry appearance to Snyder's base as taught by Sourlis to provide an ornament appearance for the apparatus.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of US Patent # 5,438,938 to Meeker et al.

Snyder teaches the base but fails to teach at least two wheels rotatably mounted to the base. Meeker et al. teaches at least two wheels (28) rotatably mounted to the base (22). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added at least two wheels to Snyder's base to as taught by Meeker et al. to provide a convenience in transporting the apparatus in a different location.

Claims 33,36,38 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder.

Snyder teaches the vertical support, display means and the display element but fails to teach they are a one piece unit. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified the vertical support, display means and display element in one piece to reduce cost in manufacturing process.

Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of US Patent 5,292,015 to Bumbera.

Snyder teaches the apparatus and the opposed face portions but fails to teach a different product display elements on each side of the opposed face portions. Bumbera teaches the apparatus (figure 2) having a different product display elements on each side of the opposed face portions (36 and 38, col. 2, lines 32-33). It would have been obvious for one of ordinary skill in

the art at the time the invention was made to have added the different product display elements to Snyder's opposed face portion as taught by Bumbera to provide an advertising on the apparatus.

Claims 1-6, 9-12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder.

Snyder teaches an apparatus (figure 1) comprising a base (44) having a top portion and a lateral side (32). The base comprises a first merchandising element (31) detachably engaged with the lateral side. The base comprises a shelving element (70) disposed on the top of base. The base further comprises a second merchandising element (21) detachably engaged with one of the base and the shelving element. The second merchandising element has a shape (figure 1). The shelving element includes shelves (70), which extend in at least two directions. The second merchandising elements comprise at least a portion (49) extending beyond the shelving element (figure 1). The second merchandising element comprises an illuminated sign (51). The base comprises a product supporting element (41) having a peg board (45) and a slat wall (figure 3). Snyder teaches the merchandising element and the base including an enclosed hollow area (figure 1 shows cross section between elements (44 and 31).

Snyder teaches the merchandising element but fails to teach the element is capable of bending through an angle of at least thirty five degrees. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have constructed Snyder's merchandising element with a flexible material to allow the element to bend through an angle of at least thirty five degrees to provide a convenience for accessing the element in the base.

Snyder teaches all elements above but fails to teach a method of merchandising a product. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used Snyder's elements in method to provide a specify step for setting up a product.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of Huston.

Snyder teaches the shelving element but fails to teach the at least one product is located on the shelving element. Furthermore, Snyder teaches the second merchandising element is a sign (51) but fails to teach the sign is related to a shoe. Huston teaches at least one product (Ss) and shoe (Sh) are located on the shelving element (S). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the product and shoe to Snyder's shelving element and sign as taught by Huston to provide a display on the shelving element.

Snyder in view of Huston teaches all elements above but fails to teach a method of merchandising a product. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used Snyder's elements in method to provide a specify step for setting up a product.

Claims 8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of Sourlis.

Snyder teaches the base but fails to teach the base has an appearance of a masonry element. Sourlis teaches the appearance of the masonry element (10). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the masonry appearance to Snyder's base as taught by Sourlis to provide an ornament appearance for the apparatus.

Snyder in view of Sourlis teaches all elements above but fails to teach a method of merchandising a product. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used Snyder's elements in method to provide a specify step for setting up a product.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of US Patent # 5,860,386 to Schwab et al.

Snyder teaches all elements above but fails to teach ballast is placed within the hollow area of base. Schwab et al. teaches the base (12) having the hollow area for ballast to be entered therein (col. 4, lines 32-39). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added ballast to Snyder's base as taught by Schwab et al. to provide a better stabilization for supporting the product above the base.

Response to Arguments


Applicant's arguments filed 2/24/03 have been fully considered but they are not persuasive.


With respect to applicant's argument on pages 4-5, stating that Snyder fails to teach a merchandising element detachably engaged with a lateral side of the base and that the merchandising element does not engage with any part of the base section. Snyder shows two lateral sides (32) and element 31 which is the merchandising element being engaged with the lateral side (figure 2, elements 34 and 39) and base (44).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred J Wujciak III whose telephone number is 703 306 5994. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Les Braun can be reached on 703 308 2156. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 3519 for regular communications and 703 308 3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.


Joey Wujciak
Leslie Braun
May 16, 2003


LESLIE A. BRAUN
SUPERVISORY PATENT EXAMINER